

**CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.10)**

Applicant(s): Michael J. Shebek

Docket No.

APC-P002-01

Application No.

10/735,144

Filing Date

December 12, 2003

Examiner

Robert M. Fetsuga

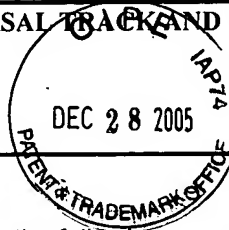
Customer No.

27268

Group Art Unit

3751

Invention: UNIVERSAL TRACK AND COPING ASSEMBLY FOR POOL COVERS

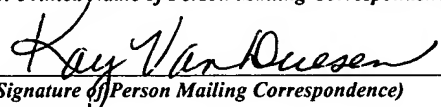


I hereby certify that the following correspondence:

Request for Continued Examination (RCE) Transmittal, Request for Continued Examination, Copy of Response to Final Office Action, Petition for Extension of Time, Check No. 310463 in the amount of \$455.00

*(Identify type of correspondence)*

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

December 28, 2005*(Date)*Kay VanDuesen*(Typed or Printed Name of Person Mailing Correspondence)*  
*(Signature of Person Mailing Correspondence)*EV 736439518 US*("Express Mail" Mailing Label Number)***Note: Each paper must have its own certificate of mailing.**



**COPY**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No.	:	10/735,144	Confirmation No.	1570
Applicant	:	Michael J. Shebek		
Filed	:	12/12/2003		
Art Unit	:	3751		
Examiner	:	Robert M. Fetsuga		
Docket No.	:	APC-P0002-01		
Customer No.	:	27268		

**RESPONSE**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is responsive to the Office Action mailed September 9, 2005, Applicant submits the following Response and Declaration of Bruce Holmes, one of ordinary skill in the field of pools and pool covers.

The Examiner objected to the Drawings because material cross-hatching is inaccurate in Fig. 6. Applicant is aware of the requirements of the C.F.R., namely 37 C.F.R. § 1.84(h)(3) which reads as follows:

(3) *Sectional views.* The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Hatching should not impede the clear reading of the reference characters and lead lines. If it is not possible to place reference characters outside the hatched area, the hatching may be broken off wherever reference characters are inserted. Hatching must be at a

substantial angle to the surrounding axes or principal lines, preferably 45°. A cross section must be set out and drawn to show all of the materials as they are shown in the view from which the cross section was taken. The parts in cross section must show proper material(s) by hatching with regularly spaced parallel oblique strokes, the space between strokes being chosen on the basis of the total area to be hatched. The various parts of a cross section of the same item should be hatched in the same manner and should accurately and graphically indicate the nature of the material(s) that is illustrated in cross section. The hatching of juxtaposed different elements must be angled in a different way. In the case of large areas, hatching may be confined to an edging drawn around the entire inside of the outline of the area to be hatched. Different types of hatching should have different conventional meanings as regards the nature of a material seen in cross section.

The Examiner has not specified what in the regulations are improper about the cross-hatching in Fig. 6. Rather, Applicant notes that the hatching is at a substantial angle to the surrounding axes or principal lines, namely 45°. A cross-section is set out and drawn to show all the materials as they're shown in the view in which the cross-section was taken. The Specification notes that coping 40 and reversible track 60 may be made of, inter alia, extruded aluminum or extruded plastic. Insert 90 is disclosed as being made of, inter alia, rubber or plastic. Applicant believes the cross-hatchings are made of regularly spaced complete parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. The cross-hatching of Fig. 6 is consistent with the other figures in the application, in fact is identical. Accordingly, Applicants respectfully request that the Examiner vacate or withdraw the pending objection.

The Examiner has rejected Claims 1 and 6-11 under 35 U.S.C. 112, first paragraph, because the Examiner contends that the disclosure does not enable a track coping assembly without an insert plate. Applicant hereby submits with this Amendment the Affidavit of Bruce Holmes, an individual of ordinary skill in the art of pool covers. In this Affidavit, Mr. Holmes

explains how a skilled artisan would understand the disclosure of the pending patent application to enable the track and coping assembly with or without an insert plate. Accordingly, Applicant respectfully requests that the Examiner vacate or withdraw the rejection under 35 U.S.C. 112, first paragraph.

Responsive to the rejection of Claim 3 under 35 U.S.C. 112, second paragraph, Applicant submits that the term "wedge" is distinct from that of the term "plate." Applicant stated on page 6 of the Response filed July 11, 2005, that insert 90 was referred to as a plate or a wedge. Applicant notes that the drawings support both the recitation of a plate, having no tapered edge, and a wedge, having a tapered edge, are consistent because a wedge with only a small taper would not be visibly discernible from a patent drawing. Patent drawings are not designed for manufacturing specifications, and as the Affidavit of Bruce Holmes attests to, one of ordinary skill would understand that the insert of Fig. 9 would support both a plate having a uniform thickness and a wedge having a slight taper. Accordingly, Applicant requests that the Examiner vacate or withdraw the pending rejection of Claim 3.

Response to the rejection of Claims 1-17 under 35 U.S.C. 102(a/e) as being anticipated by Last, '990, Applicant submits that the instant claims include material structural limitations that distinguish over Last '990. Applicant points out that Claims 1 and 12 defined apertures having different structural characteristics. The drawings of Last '990 only show a track having mirror image apertures. Even in the most favorable light, the disclosure of Last in column 12, lines 42-53, merely state that an artisan would know how to design and specify different cross-sectional configurations having the mirror image apertures. Last contains no teaching or suggestion to have different structural characteristics for each aperture. In fact, the Affidavit of Bruce Holmes supports Applicant's position that one of ordinary skill would not comprehend the disclosure of Last to teach or suggest having non-mirror image apertures in the device of Last.

The invention of the present application distinctly and particularly claims a reversible track with a first opening having defined a first configuration and a second opening defining a second configuration. These configurations are adapted to receive rope arrangements which are different from each other, and thus the structural characteristics of those openings conform to the

Appl. No. 10/735,144  
Amdt. dated December 7, 2005  
Reply to Office Action of September 9, 2005

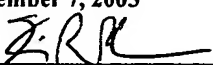
different structural characteristics of the different rope arrangements which may be used in a pool installation.

Applicant submits that the pending objections and rejections have been adequately addressed, and respectfully requests allowance of the pending application.


### CONCLUSION

In light of the above arguments, Applicant believes that the application is in allowable form and action toward that end is respectfully requested. If any issues remain that can be resolved by telephone, Examiner is invited to call the undersigned attorney.

In the event that Applicant has overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 02-0390, BAKER & DANIELS.

<p align="center"><b>CERTIFICATE OF MAILING</b> (37 C.F.R. § 1.8(a))</p> <p>I hereby certify that, on the date shown below, this correspondence is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the address above on the date indicated below.</p> <p><b>December 7, 2005</b></p> <p>By:  Kevin R. Erdman</p>
--

Respectfully Submitted,

By:   
Kevin R. Erdman, Reg. No. 33,687  
Baker & Daniels LLP  
300 N. Meridian Street, Suite 2700  
Indianapolis, IN 46204  
Phone: (317) 237-0300  
Fax: (317) 237-1000  
E-mail: [kevin.erdman@bakerd.com](mailto:kevin.erdman@bakerd.com)

KRE:jk

Enclosures: Declaration  
Return Postcard



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/735,144 Confirmation No. 1570  
Applicant : Michael J. Shebek  
Filed : 12/12/2003  
Art Unit : 3751  
Examiner : Robert M. Fetsuga  
  
Docket No. : APC-P0002-01  
Customer No. : 27268

**DECLARATION OF BRUCE HOLMES**

I, Bruce Holmes of 20 Fairlane Drive, Brownsburg, Indiana 46112, declare as follows:

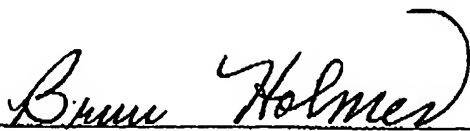
1. I have over twenty-one (21) years of experience of installing and servicing pools for a leading company that installs hundreds of pools a year and related equipment including automatic pool covers.
2. I have studied the disclosure of the above-identified patent application and the disclosure of U.S. Patent No. 6,496, 990 to Last (the "Last Patent").
3. In accordance with my understanding of the pool industry and the structures involved, it is my opinion that a track and coping of the above-identified application may be constructed with or without an insert plate as disclosed in the application. It is well known in the industry that different sizes and shapes of tracks in coping may be used, and material thicknesses in each may be varied. Typically, but not exclusively, an insert plate is used as a locking mechanism because an insert plate may be easily removed for servicing the track then reinserted to lock the track. However, it is also understood that in some environments an insert plate would not be desired, in which case the material thicknesses would be varied to obviate the need for an insert plate. Accordingly, it is my opinion that an artisan of ordinary skill in the pool equipment installation industry would recognize that the invention of the above-identified patent application could be implemented with or without an insert plate.
4. I have also reviewed the disclosure of Fig. 6 and the alternative terminology of a plate or a wedge in the disclosure of the above identified application. It is my opinion that one of ordinary skill in the pool equipment installation industry would recognize that a wedge may have a slight taper that is not visibly discernible from a plate. In certain configurations a wedge may be preferred, in others a plate. In the context of using the plate or wedge to lock in the track, the

wedge would necessarily have only a slight taper. Accordingly, it is my opinion that an artisan of ordinary skill in the pool equipment installation industry would recognize the alternative structures possible for an insert plate as disclosed in Fig. 6.

5. I have studied the disclosure of the Last Patent, including the text in column 12 lines 42-53, and it is my opinion that the Last Patent contains no teaching or suggestion that the two C channels of the cover track would have configurations different from each other. Rather, it is my opinion that the entire disclosure of the Last Patent teaches and suggests that the C channels would be mirror images to accommodate the disclosed rope arrangement. The noted portion of the disclosure of the Last Patent does teach that the extruded longitudinal track does not necessarily require a C channel configuration, but it is my opinion that the Last Patent contains no teaching or suggestion that the opposite channels would be anything other than an identical or mirror image of each other. In the pool equipment installation industry, tracks are designed to fit the particular pool cover rope arrangement that is sold with the tracks. The invention of the above identified application uniquely provides an arrangement that accommodates different rope configurations in the differently configured channels, which neither the Last Patent nor other known track configurations provide. This universal tracking arrangement allows an installer to have just one type of track and still accommodate the various rope arrangements of different pool covers, and it is my opinion that this departure from the teachings of the Last Patent is a non-obvious modification that is neither taught nor suggested by any prior art of which I am aware.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

And further, I sayeth not.

  
\_\_\_\_\_  
Bruce Holmes

Date: \_\_\_\_\_

